

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

DOPACO, INC.<sup>1</sup>

Employer

and

UNITED AUTOMOBILE WORKERS OF AMERICA, REGION 4, AFL-CIO

Petitioner

Case 13-RC-20612

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

All production and maintenance employees, including lead persons and quality control employees, employed by the Employer at its location currently located at 315 Kirk Road, St. Charles, Illinois 60174; but excluding all technical, office/clerical, confidential, managerial, professional employees, guards, and supervisors as defined in the Act.

**DIRECTION OF ELECTION\***

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible

shall vote whether or not they desire to be represented for collective bargaining purposes by United Automobile Workers of America, Region 4, AFL-CIO

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of the full names of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **July 30, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **August 6, 2001**.

**DATED** July 23, 2001 at Chicago, Illinois.

/s/Elizabeth Kinney  
Regional Director, Region 13

- \*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:
- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.
  - (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
  - (c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing have been carefully considered.
- 3/ The Employer is a corporation engaged in operating a facility that manufactures food dispensing products for the fast food industry.
- 4/ The Petitioner seeks to represent a unit of all full time and regular part time production and maintenance employees employed by the Employer at its St. Charles, Illinois, location, but excluding all technical, office/clerical, confidential, managerial, professional employees, guards, and supervisors as defined in the Act.

Initially, the Petitioner took the position that eight quality control employees, seven lead persons, and two clerical employees (materials assistant and sales/service coordinator) should be excluded from the petitioned-for unit. The Employer took the position that the eight quality control employees, seven lead persons, and two clerical employees at issue should be included in the unit, but that the maintenance department employees should be excluded. During the hearing, the parties stipulated to include the eight quality control employees in the petitioned-for unit and, after testimony on the status of the lead persons, the Petitioner agreed with the Employer's position that the lead persons are properly included in the petitioned for unit. Based upon the agreements of the parties and the record, I shall include the quality control employees and the lead persons in the unit found appropriate herein. Remaining at issue is whether the two clericals should be included or excluded from the unit found appropriate and whether the exclusion of the maintenance department is necessary to establish an appropriate bargaining unit.

## **FACTS**

The Employer manufactures food dispensing products, such as french fry containers, poly cups, lids, and clam shell containers for the fast food industry mainly at its St. Charles, Illinois facility. The Plant Manager has overall responsibility for the facility and is responsible for all aspects of the facility's operations. The Plant Superintendent, Chris Handman, is responsible for all production employees, plant productivity, maintaining schedules, disciplinary actions, shipping, edge reports, and making sure that everything in the plant flows smoothly. Handman reports directly to the Plant Manager. Department Superintendents, who oversee the Printing & Finishing/Cartons and Cups & Lids departments, report to Handman. Others who report directly to the Plant Manager include: the Materials Manager, the Plant Engineer, and the Quality Control ("QC") department head. QC employees report directly to the QC department head.

Different departments operate on different shifts and schedules. The Printing department has three shifts: 6:30 a.m. to 2:30 p.m., 2:30 p.m. to 10:30 p.m., and 10:30 p.m. to 6:30 a.m. The Finishing, Maintenance, and QC departments also have three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. The Shipping/Receiving department has two shifts: 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m.

All employees use the same job application form and processed through human resources. When employees are hired for positions internally, the applicant's seniority, skills, and abilities are considered. Once hired, all employees go through an orientation and are given the Dopaco Employee Handbook, which contains company policies and procedures, such as disciplinary procedures, applicable to everyone. Employees' skills and abilities are evaluated to determine what training is necessary, if any. Training is often provided in-house, or in some cases, through a local community college. Employees are not required to wear uniforms; however, they are all subject to the same American Sanitation Institute (ASI) standards regarding their work attire. All production and maintenance workers are required to wear protective personal equipment, including steel-toed shoes, hairnets, ear plugs, and safety goggles. Maintenance and production employees use the same washrooms and lunch or break room.

Production and maintenance employees, including the tool crib attendant, are all paid hourly and record their hours using a time clock. They receive overtime compensation, in addition to standard benefits such as medical and dental insurance, holiday and vacation pay, and 401(k) profit sharing benefits when they qualify. Although wages vary based on length of service and/or experience and skills within various departments, the record shows that mechanics' wages are generally higher than the production employees' wages.

Production employees are divided into various departments or categories: Printing, Finishing, Cups, Thermal Forming, and Shipping and Receiving. Finishing and Cups are supervised by separate superintendents. As stated above, department superintendents report directly to the Plant Manager. The Printing department has four supervisors—one supervisor per shift, except the first shift has two, which includes Mike Dettore, the Special Services supervisor. The record does not provide any additional evidence regarding who supervises the remaining departments in production.

The Maintenance department employees provide support to all the departments at the Employer's manufacturing facility. Specifically, the department ensures that operations keep running by repairing any mechanical or electrical breakdowns on the production floor, performing preventive maintenance on machines, and fabricating products for internal use. The Maintenance department is comprised of a plant engineer (David Ovenshire), nine employees, including one tool crib attendant and one lead person.

Maintenance department employees are categorized as A mechanics and B mechanics. A mechanics are required to do more electrical work and sometimes direct and guide B mechanics. The mechanics' job is to perform the maintenance on the machines, requisition any parts needed to complete projects, and sometimes build equipment from the ground up. Typical tasks that mechanics to do to fix machines include communicating with operators or the line people to analyze the problem and determine what parts may be broken, what caused the problem, and troubleshoot. Actual repair work performed by mechanics includes: welding, machining, and manufacturing parts needed for certain repairs.

The tool crib attendant is responsible for ordering supplies and keeping track of inventory in the maintenance department. When mechanics need parts, they will ask the attendant to locate the part or to order it for them. The attendant also keeps track of purchase orders and give them to accounts payable. The plant engineer or other supervisors may also provide a list of supplies needed for upcoming projects or repairs. The tool crib attendant does not order raw materials or other supplies necessary for the production process.

Mechanics can volunteer to operate machinery for production if they so desire, although they are not required to do so. Mechanics interact with production employees to discuss problems related to the operation and repair of machines. Maintenance employees attend production meetings. Production employees assist maintenance employees to the extent they can in getting broken machinery fixed, unless the repairs involve electrical problems, which mechanics handle on their own. Production employees sometimes perform maintenance-type tasks, such as changing bearings, bushings, or belts without maintenance employees' assistance.

### Clerical Employees

The Employer employs two clericals whose unit status is at issue herein: a materials assistant (Terese George) and a sales/service coordinator (Julie Sauber). George works 8:00 a.m. to 5:00 p.m. and is a salaried employee who does not receive overtime compensation. She receives holiday and vacation pay, medical and dental benefits, and participates in the Employer's 401(k) plan. Sauber also works 8:00 a.m. to 5:00 p.m., but she is paid hourly and receives overtime compensation. Since she is filling in for an employee who is currently on medical leave, Sauber also does not receive any benefits, except for paid holidays.

The materials assistant creates "pick lists" or packing lists that let the shipping department know what products need to be shipped to certain customers. Pick lists are generated from customer orders logged into the Employer's computer system. George is also responsible for processing all the paperwork from shipping to ensure that everything that is shipped is also accurately reported in the computer system. George maintains a new products, new business, and promo spread sheet, in addition to doing an "edge report" or a shortage report. Part of the materials assistant's duties include matching freight bills to bills of lading and letting accounts payable know whether or not to pay the bill. As materials assistant, George testified that she occasionally interacts with shipping and receiving employees if there is a problem, such as a truck picking up an order and there is no paperwork available or if she is expediting in an order from another plant. With respect to other employees in production, George interacts more with department heads at production meetings than with other employees. George works in the front office area where the accounting and management personnel work. George testified that she did not spend much time in the production area of the facility. As the materials assistant, George reports to the materials manager, who supervises shipping and receiving, purchasing, and customer service.

As the sales/service coordinator, Sauber receives customer orders that have to be shipped out of the St. Charles facility. She works in a cubicle located in the front office. Once Sauber receives the orders, she signs the order forms, confirming pricing and quantity, and then faxes a confirmation to the customers. Sauber then enters the confirmation into the Employer's system, which triggers the production process, and then files a copy of the order in the shipping file which is later used by George to prepare the pick list. Sauber also files bills of lading and answer customer phone calls. Sauber very rarely talks to people in shipping and receiving, and she testified during the hearing that she generally interacts with production employees only on a casual, non work-related level. As the sales/service coordinator, Sauber reports to the materials manager.

## ANALYSIS

### Scope of Unit -Maintenance Department Employees

At issue is whether the petitioned-for bargaining unit including both production and maintenance employees at Dopaco's St. Charles facility is an appropriate unit for the purposes of collective bargaining.

The Act does not require that the bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured "the fullest freedom in exercising the rights guaranteed by this Act." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950) enf'd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). Thus, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Rohtstein Corporation*, 233 NLRB 545, 547 (1977). The Board will pass only on the appropriateness of units that have been argued for, and the burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

The Board has reasonably broad discretion in determining what constitutes an appropriate bargaining unit. *Kalamazoo Paper Box Corp.*, 136 NLRB 134,137 (1962). However, a major determinant in an appropriate unit finding is the community of interests of the employees involved. In *Kalamazoo*, the Board enumerated various factors to be considered in determining whether individuals have a community of interest with other employees, which included: method of wages or compensation, hours of work, employment benefits, supervision, qualifications, training and skills, job functions, amount of contact with other employees, integration of work functions, and bargaining history.

Based upon the entire record herein, I find the petitioned-for employees, including the maintenance employees, share a sufficient community of interest to constitute an appropriate unit for collective bargaining. The maintenance employees work in the same

facility as the production employees, share common restroom and lunch room facilities with the production employees, and their job duties are functional integrated with the production employees in that they maintain and keep the equipment used by the production employees operating. *Mayflower Contract Services v. NLRB*, 982 F.2d 1221 (8<sup>th</sup> Cir. 1993), 142 LRRM 2272 at 2276 (abrogated by *NLRB v. Young Women's Christian Ass'n of Metropolitan St. Louis*, 192 F.3d 1111 (8<sup>th</sup> Cir. 1999) on other grounds involving jurisdiction). In order to perform their job functions, the maintenance employees have regular contact and interaction with production employees, and there is some overlap in job functions. Maintenance employees attend production meetings and discuss and coordinate the repair of machinery with production employees. Production employees often performed some, albeit easier, maintenance tasks on machinery without the assistance of mechanics. Moreover, while they are not required to, mechanics have the option of volunteering for production work if they so desire. Maintenance employees and the production employees are subject to the same hiring process, employee handbook of policies and procedures, and ASI standards for personal protective equipment. Although maintenance employees generally receive higher wages than production employees, both production and maintenance employees are paid hourly and receive similar benefits including overtime compensation.

I find that the cases relied upon by the Employer on this issue do not require a different result from that reached herein. In both *E.I. DuPont and Co.*, 162 NLRB 413 (1996) and *Anheuser Busch, Inc.*, 170 NLRB 46 (1968), separate units of maintenance employees were sought by petitioners and, in the circumstances of those cases found appropriate by the Board. However, as the Board has observed, “while the cases cited by the Employer *permit* separate units, they do not prohibit inclusion of . . . other employees in one unit when other community-of-interest criteria are met”. *Panhandle Telecasting Company d/b/a KFDA-TV Channel 10*, 308 NLRB 667, 668 (1992). While there are some differences between the maintenance employees and production employees herein that arguably might make a separate unit appropriate, there are, as I have found, sufficient community of interests between the production employees and the maintenance employees to establish the appropriateness of the overall unit. Further, and no labor organization seeks to separately represent the maintenance employees. *Reliable Castings Corporation*, 236 NLRB 315, 316 (1978).

### Clerical Employees

The second issue in the present case is whether the Employer's two clericals—the materials assistant and the sales/service coordinator—should be included in the bargaining unit. “The distinction between office and plant clericals is rooted in community-of-interest concepts.” *Nor-Cal Ready Mix, Inc.*, 327 NLRB 1091, 1095 (1999), citing *Cook Composites & Polymers Co.*, 313 NLRB 1105, 1108 (1994); *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). “Employees who perform clerical duties in close association with the production process and with production or maintenance employees are considered plant clericals and are included in the same unit as production employees.” *Nor-Cal Ready Mix*, supra at 1095, citing *Brown & Root, Inc.*, 314 NLRB 19, 23, (1994); *Goodman Mfg. Co.*, 58 NLRB 531, 533 (1944). Typical

plant clerical duties are timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies. *Hamilton Halter Co.*, 270 NLRB 331 (1984). Plant clerical employees are customarily included in a production and maintenance unit because they generally interact with and share a community of interest with the employees in the plantwide production and maintenance unit. *Raytec Co.*, 228 NLRB 646 (1977).

Based upon the record, I find that the materials assistant is properly excluded from the petitioned-for unit. She is a salaried employee who spends most of her work day performing clerical type functions in the front office area of the facility. While some of her clerical functions are related to the orderly flow of shipments of orders to customers, unlike the typical plant clerical, she does not have any significant contact or interaction with production employees. Rather, most of her contact with production is with supervisors. *Peco Energy Co.*, 322 NLRB 1074, 1084 (1997). Based upon the nature of her duties, separate work location, different method of pay and minimal contract with production and maintenance employees, I find that the materials assistant does not share a sufficient community of interest with the production and maintenance employees to require her inclusion in the unit found appropriate herein. *Weldun International, Inc.*, 321 NLRB 733, 735 (1996). Similarly, I find that the sales/service coordinator is also properly excluded from the bargaining unit found appropriate. The sales/service coordinator works in the front office, spends most of her time engaged in clerical functions or customer service functions, and she has even less contact and interchange with the production and maintenance employees than the materials assistant employee. Accordingly, she does not share a sufficient community of interest with the production and maintenance employees to require inclusion in the unit found appropriate herein.

Contrary to the Employer, I do not find the fact that because both the material assistant and the sales/service coordinator perform some clerical functions that are related to the production process makes these employees “plant clericals” who should be included in an overall production and maintenance unit in the circumstances herein. The determining factor for unit inclusion is not so much whether the clerical duties are related to production functions, but whether the performance of those duties give rise to a community of interest with the production and maintenance employees. Here, the record shows that clerical duties of the material assistant and the sales/service coordinator which are related to the production process do not give rise to a sufficient community of interest with the production and maintenance employees so as to require their inclusion in the unit. See, *Weldun International, Inc.*, *supra* at 735

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Voter Eligibility – Clerical (18)

UntOs -Unit Other Scope/Definition (13)

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401-7550



